

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
Criminal Division  
2018/CRI/bal/FP/00116**

**B E T W E E N**

**JAYCEE JEFFREY SIMMONS**

**Applicant**

**AND**

**THE ATTORNEY GENERAL**

**Respondent**

Before: The Honourable Mrs. Justice Petra Hanna-Adderley

Appearances: Mr. Lennox Colby for the Applicant  
Mrs. Erika Kemp for the Respondent

Hearing date: March 25, 2019

**DECISION ON BAIL**

**Introduction**

1. The Applicant is a Bahamian male citizen. He is 21 years old having been born on February 22, 1998.
2. The Applicant is charged with 1 count of attempted murder.
3. The Applicant was remanded to the Bahamas Department of Corrections on June 20, 2018 by S & C Magistrate Gwendolyn Claude.
4. The Applicant was served with the Voluntary Bill of Indictment on September 13, 2018.
5. The Applicant was arraigned before Justice Estelle G. Gray Evans on October 18, 2018 when he pleaded not guilty and was further remanded. His trial is set down for June 7-11, 2021 and his Pretrial Review is set down for November 14, 2019.
6. The Applicant asserts his innocence.
7. The Applicant has no antecedents and no matters pending before any court.

### **Statement of facts**

8. The Applicant relies on his Affidavit filed on March 25, 2019 in which he states, in part, that by the date of his trial he will have been incarcerated for about 3 years and that there is no guarantee that the trial will proceed.

9. That when he was arrested he did have a pocket knife on him and to date this knife has not been linked to the stabbing by a DNA report indicating that the Virtual Complainant's blood was found on it. Nor is there any DNA evidence that the Virtual Complainant's blood was found on his clothing.

10. That while in custody he consented in writing to participating in an identification parade but instead the Police conducted what he called a "Rouge" identification (photograph lineup identification) which was more prejudicial to him than an Identification Parade.

11. That the Virtual Complainant and the eye witness know him, his entire family including his cousins and may be mistaken as to who they say they saw stabbing the Virtual Complainant, and the Virtual Complainant knows that his nick name is not "Jeff".

12. That his antecedents are convictions save for one, by the Juvenile Panel and he was a minor when charged with all of them. They should have been expunged from his record or not used. That he was absolutely discharged on the one count not before the Juvenile Panel and he was a minor when charged with that matter. That he has no pending matters before any court. Nor has he ever been charged with any of the offences mentioned in part C and D of the Bail (Amendment) Act 2011.

13. That he believes that the Virtual Complainant is a Jamaican citizen and he believes that he has left The Bahamas and is living in Jamaica.

14. The Applicant stated that he is no threat to the community in which he was born and has spent all of his life. He is employed as a Construction Worker with Top Noch Construction Company and he intends to work and help out with the family business and his continued incarceration will make securing meaningful employment difficult and will deny him the opportunity to gain job experience.

15. That he will not abscond from the jurisdiction and will attend his trial. That he will abide by any conditions set by the Court in granting bail including being monitored electronically.

16. The Crown opposes this application and relies on the Affidavit of W/Corporal 2700

Miriam McDonald of the Royal Bahamas Police Force. Officer McDonald states, in part, that the Virtual Complainant was stabbed in the neck with a knife by the Applicant. That the injury sustained was determined by Dr. Parado of the Rand Memorial Hospital to be serious. That the Applicant was seen stabbing the Virtual Complainant by an eyewitness. That the Applicant denies the stabbing and refused to sign his record of interview. When arrested he was in possession of a knife. That the Applicant had antecedents. Officer McDonald exhibited the statement of the Virtual Complainant Mr. Christiano Gayle, the eye witness, Mr. Kesnell George, the unsigned Record of Interview, the photo identification documentation and the RBPF medical form.

17. The Virtual Complainant stated that he started work as a construction worker on the new Government Complex in Eight Mile Rock when he was approached at about 9:00 a.m. on the date in question by the Applicant, who was known to him as Jeff, and who asked him if he was now working on the construction. He told him that he was and the Applicant said "okay" and walked off. Shortly after 12:00 noon he left the site on his lunch break and walked to his mother-in-law to use her cellphone. She had no minutes so he borrowed the cellphone of a male in the yard. He had the cellphone to his ear when the Applicant and 2 other males approached him. The Applicant asked him if he remembered him and before he could respond the Applicant began stabbing him about the body with a knife that he pulled from his right pocket. That the Applicant stabbed him 3 times, once in his neck, once in his elbow and once in the lower right side of his back. That he was in fear for his life, he felt that the Applicant was trying to kill him. The Applicant and the other 2 males had him surrounded and blocked him from getting away. They started throwing rocks at him. A rock hit him in his back. When he was being stabbed he heard the male whose cellphone he had borrowed say "Jeff stop". He ran to another Plaza and the Applicant and the males followed. He then ran onto the main road and the Applicant and the 2 males ran into Pinedale. The man whose phone he had borrowed followed him and told him to stop. He was losing a lot of blood. He stopped and an ambulance arrived shortly after that. He identified the Applicant from a photo lineup.

18. Mr. Kesnell George stated in his statement that the Virtual Complainant asked to borrow his cellphone. As he started to make the call he saw 3 men walking towards the Virtual Complainant. He recognized the Applicant as Jaycee Simmons and one of the other 2 men as "Giovanna" but he did not know the 3<sup>rd</sup> man. He saw the Applicant with a

knife in his hand. He grabbed the Virtual Complainant by the neck of his shirt and asked him if he remembered him and he saw the Applicant stab the Virtual Complainant in the neck area with the knife several times. The Virtual Complainant fell to the ground. Giovanna held the Virtual Complainant at first along with Jaycee so that Jaycee could stab him. The Virtual Complainant ran to the main road and the 3 men ran into Pinedale. Mr. George followed the Virtual Complainant to a plaza and used the shirt of another man to wrap around the Virtual Complainant's neck. The ambulance was called and came thereafter. Mr. George identified the Applicant from a photo lineup.

19. The Applicant has professed his innocence and refused to sign his Record of Interview.

### **Submissions**

20. Mr. Lennox Colby of Counsel for the Applicant submitted, in part, that the purpose of Bail is to ensure the attendance of the Applicant at his trial. That the overriding principle is that the Defendant should be at large unless it can be proven that he will abscond or not attend his trial. The Applicant has never been charged with escape. He has cogent ties to his community. He has no antecedents. There is no evidence that if admitted to bail he will re-offend. That he has not been charged with any offences under Part C or D of the Bail Act. He was gainfully employed when arrested and is no threat to the community in which he lives. He is not a flight risk and any such concern can be addressed with electronic monitoring. That balance of convenience lies in the Applicant's favour. He intends to call witnesses in his defence. The charge is serious but the Applicant maintains his innocence. That the Applicant is a proper candidate for bail.

21. Mrs. Erika Kemp, of Counsel for the Crown submitted, in part, that the Applicant is not a fit and proper person to be admitted to bail. That the Applicant is a threat to his community. There was no provocation on the part of the Virtual Complainant. He stabbed the Virtual Complainant for no reason. The Applicant brought friends with him to gang the Virtual Complainant. An eye witness identified the Applicant and may in fact be in a position now where he may be attacked. The Applicant knows who he is and may interfere with him. Reporting conditions will not ensure the Applicant's attendance at his trial. Many persons who are required to report to the Police Station fail to attend their hearings. The trial date is in 2021 but there are times when the Attorney General can bring on a trial before the trial date. A person who is minded to attack someone for no reason is a danger

to the community.

22. Mr. Colby in his reply submitted that Bail is not to be used to punish the Applicant. That the trial date is 3 years away from the date of the Applicants incarceration and falls into the category of unreasonable delay. That the eye witness is in no danger because he was not ganged at the scene. That statistically more Defendants attend their trial than do not.

**Issue**

23. The issue for the Court to determine is whether the Applicant is a suitable candidate for bail pursuant to Section 4, Part A of the Bail (Amendment) Act, 2011.

**Analysis and Conclusions**

24. I have reviewed the Statements of the Virtual Complainant and Mr. George the eyewitness. They are consistent with the Applicant having attacked and stabbed the Virtual Complainant with a knife about the body. They both knew the Applicant and identified him from a photo lineup. The Applicant was found in possession of a knife. The Hospital Form speaks to multiple and serious stab wounds. The prima facie evidence against the Applicant is strong.

25. The Court must consider the nature and seriousness of the offence. Attempted Murder is a serious offence. In the case of **Jonathan Armbrister v A.G.** SCCr. App. No. 145 of 2011 John, JA states at paragraph 13:

**"13. The seriousness of the offence with which the accused is charged and the penalty which is likely to entail upon conviction, has always been and continues to be an important consideration determining whether bail should be granted or not. Naturally, in cases of murder and other serious offences, the seriousness of the offence should invariably weigh heavily on the scale against the grant of bail."**

26. The onus is upon the Crown to satisfy the Court that the Applicant ought not be granted bail and the standard of proof is on a balance of probabilities.

27. Section 4, Part A of the Bail (Amendment) Act 2011 provides:

"In considering whether to grant bail to a defendant, the court shall have regard to the following factors—

(a) whether there are substantial grounds for believing that the defendant, if released

on bail, would-

- (i) fail to surrender to custody or appear at his trial;
- (ii) commit an offence while on bail; or
- (iii) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;
- (b) whether the defendant should be kept in custody for his own protection or, where he is a child or young person, for his own welfare;
- (c) whether he is in custody in pursuance of the sentence of a Court or any authority acting under the Defence Act;
- (d) whether there is sufficient information for the purpose of taking the decisions required by this Part or otherwise by this Act;
- (e) whether having been released on bail in or in connection with the proceedings for the offence, he is arrested pursuant to section 12;
- (f) whether having been released on bail previously, he is charged subsequently either with an offence similar to that in respect of which he was so released or with an offence which is punishable by a term of imprisonment exceeding one year;
- (g) the nature and seriousness of the offence and the nature and strength of the evidence against the defendant."

28. The Court must also consider the character and antecedents of an Applicant. The Applicant has no antecedents.

29. The presumption of innocence is enshrined in the Constitution of the Bahamas. A bail application is essentially an assessment between the competing interests of the Applicant and the community. The rights and the safety of the Applicant and the safety of the public have to be weighed. The facts and circumstances of each case are different and needs an individual assessment.

30. In considering all the circumstances relevant to this hearing I accept the submissions advanced by the Crown and I find that the Respondent has satisfied me that this Applicant ought not to be granted bail pending his trial and I hereby deny bail for the following reasons:

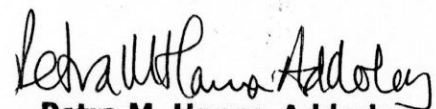
- (i) The charge of attempted murder is a serious offence but one for which bail can be granted. The seriousness of this charge and prima facie evidenced advanced by the Crown weigh heavily on the scale against the grant of bail.

- (ii) There is strong evidence against the Applicant advanced by the Virtual Complainant and the eye witness Mr. George which must be vetted at trial not in a bail application. At this point the Court only has before it Statements by the witnesses but the prima facie evidence contained in these Statements against the Applicant is strong. The Witnesses knew Applicant and further identified him from a photo lineup.
- (iii) Because of the nature and seriousness of the offences and again, what I believe is the cogency of the evidence, the Applicant will know that if he is convicted he is likely to receive a long sentence and he may be tempted to abscond. But there is no evidence before the court to suggest that he might abscond. Nor is there any evidence before the Court that he will interfere with the witnesses.
- (iv) There has been no unreasonable delay thus far. A reasonable time having been defined by Parliament as 3 years from the date of incarceration to trial. Although at the time of his trial the Applicant will have been incarcerated for just under 3 years, I see no violation at this juncture of the protection afforded the Applicant by the Act.
- (v) There is no evidence before the Court that there is a real likelihood that he will commit an offence if put on bail again.
- (vi) It does not appear that the Applicant should be remanded in custody for his own protection.

### **Disposition**

31. In weighing all of the competing considerations of the presumption of innocence with the need to protect the public order and public safety, the Court is of the view that in the circumstances presently existing the need for public order and public safety is of the highest importance. The charge is serious in nature and the prima facie evidence is strong. Given the nature of the offence and that the description of the vicious attack on the Virtual Complainant by the Applicant and others speak to a wanton disregard for human life, I am compelled to conclude that the safety of the public dictates that Bail be and is refused at this time.

This: 26<sup>th</sup> day of March, A. D. 2019

  
**Petra M. Hanna-Adderley**  
**Justice**